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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of:

Gary Zeik, et al.

Application No. 09/854,970

Filed: May 14, 2001

SHIELDED STRUCTURE FOR
RADIATION TREATMENT EQUIPMENT)
AND METHOD OF ASSEMBLY)

)
) Before the Examiner
) Chi Q Nguyen
)
)
) Group Art Unit
) 3635
)
) October 13, 2003

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Honorable Commissioner for Patents, Alexandria, VA 20231 on
October 13, 2003

(Date of Deposit)

John M. Bradshaw

Name of Registered Representative

John M. Bradshaw

Signature

October 13, 2003

Date of Signature

PETITION TO WITHDRAW NOTICE OF ABANDONMENT

Assistant Commissioner for Patents
Office of Patent Publications
Attn: Tom Hawkins
2231 Crystal Drive
Crystal Park 3, Suite 910
Arlington, VA 22202

Sir:

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The Applicant hereby requests that the Notice of Abandonment issued in the above-referenced application be withdrawn on the basis that the Response to the Office Action dated March 13, 2003 was timely filed by the Applicant. In accordance with a telephone conference with Examiner Chi Q. Nguyen on October 6, 2003, it is believed that no fee is due with regard to submission of this petition. However, to the extent it is determined that a petition fee is due, the Office is hereby authorized to charge deposit account number 23-3030 for any such petition fee.

REMARKS

An Office Action was mailed to the Applicant on March 13, 2003 for the above-referenced application, copies of which are attached hereto. The indicated deadline for a response to this Office Action was September 13, 2003.

On September 12, 2003, the Response to the March 13, 2003 Office Action was mailed along with a Request for Extension of Time to respond to the Office Action.

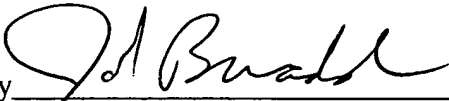
On October 6, 2003, the Applicant received a Notice of Abandonment dated October 2, 2003 indicating the following: "This application is abandoned in view of: Applicant's failure to timely file a proper reply to the Office letter mailed on March 13, 2003."

The Applicant submits that the required Response to the Office Action and subsequent Request for Extension of Time was in fact timely filed within the statutory period of six months from the mailing date of the Office Action dated March 13, 2003 and was sent via first class mail with the United States Postal Service; and, that the Certificate of Mailing certifies that the Response to the Office Action was deposited with the United States Postal Service as first class mail on September 12, 2003.

Moreover, the undersigned attorney hereby certifies and attests that to the best of his knowledge and belief, the above-identified Office Action was deposited with the United States Postal Service as first class mail on September 12, 2003. Accordingly, the Applicant respectfully requests withdrawal of the Notice of Abandonment.

The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the present application.

Respectfully submitted,

By 

John M. Bradshaw, Reg. No. 46,573
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& Henry LLP

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,970	05/14/2001	Gary Zeik	8236-3	9096

7590

03/13/2003

James M. Durlacher
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EXAMINER

NGUYEN, CHI Q

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 03/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

04-13-03
06-13-03
09-13-03

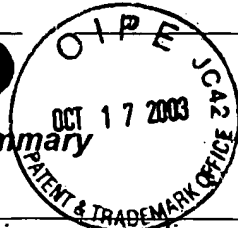
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MAR 17 2003

Woodard, Emhardt, Naughton,
Moriarty & McNett

Office Action Summary



Application No.

09/854,970

Examiner

Chi Q Nguyen

Applicant(s)

ZEIK ET AL.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4, 30-40, 49, 51 and 52 is/are allowed.
- 6) ☒ Claim(s) 1, 5-29, 41-48, 50 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

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DETAILED ACTION

This office action is response to the applicant's amendment filed on 12/4/02. Examiner apologizes for the claims 20-29, 42-43 were left out in the previous office action.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 5-11, 41-48, 50 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillmore (US 5,832,676) in view of Brent (US 5,695,443).

Gillmore discloses a building structure 100 comprises plurality of modules 110, 120, 130, 140 having a roof. The modules 110, 120, 130, 140 having a support frame structure 200 is made from aluminum tubing, a barrier comprise walls 261, 264, a door 149. Each of the modules have a major axis, which are horizontal 114, a vertical 112 axis defined along their length and the major axes of the first plurality of modules are substantially parallel to each other and the major axes of the second plurality of modules are substantially parallel to each other, the major of the second plurality of modules are substantially perpendicular to the major axes of the first plurality of modules, the plurality of modules are coupled to a foundation 240 and the barrier 261, 264 abut the foundation, wherein medical or scientific personnel are required to physically be in the interior space preparatory to operation of the high energy radiation

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source (see col. 4, lines 55-69) inherently having medical devices to perform the X-ray or CAT scan.

Gillmore does not disclose expressly the barrier including first and second spaced rigid walls and a quantity of radiation shielding filler material, the roof comprising a rigid floor supporting a quantity of radiation shielding filler material above the central treatment area, the second plurality of modules over the barrier formed by the first plurality of modules are in fluid communication with the barrier such that radiation shielding filler material provided into the roof barrier can flow into the barrier.

Brent teaches high-energy radiation emission shelter comprising a module having two major components 12, 14 together serve as a barrier including first, second spaced rigid walls and a quantity of radiation shielding filler material 18 in between the two walls, a roof 72 having a rigid floor 42 supporting a quantity of radiation shielding filler 18 in the fluid communication, which the radiation shielding filler flow into the barrier (see figs. 3-4).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Gillmore with Brent for the barrier including the first, the second spaced rigid walls and the quantity of radiation shielding filler material between two walls and the roof having the rigid floor with the radiation shielding filler communicated with the wall barrier. The motivation for doing so would have been to provide more accurate control of the radiation emission from the medical devices would be escaped through wall or roof barriers.

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3. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillmore (US 5,832,676) in view of Brent (US 5,695,443).

Gillmore and Brent teach the structural elements for the modules with radiation shielded barrier as stated in paragraph 2 except for the modules each have a length not exceeding about 53' a width not exceeding about 14', and a height not exceeding about 13'6". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the specific dimensions for the module, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or working ranges involves only routine skill in the art.

4. Claims 20-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gillmore (US 5,832,676) in view of Brent (US 5,695,443).

Gillmore and Brent teach the structural elements for the modules with radiation-shielded barrier as stated in paragraph 2. Gillmore and Brent do not teach expressly the method of assembly the building modules; examiner considers this to be obvious method of setting up the device of claims.

Allowable Subject Matter

5. Claims 2-4, 30-40, 49 and 51-52 are allowed.

The following is an examiner's statement of reasons for allowance: The prior art fail to disclose or render obvious the claimed combination including at least tow of the plurality of modules each include portions of the first and second spaced apart rigid walls, the portions defining a channel so that the radiation shielding filler material can flow into the

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adjacent channel. And the door and the retractable threshold having radiation shielding material with a lifting mechanism as specifically set forth in the claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 5-29, 41-48, 50 and 53 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Swensson (US 6,243,993) teaches the modular healthcare room interior.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chi Q. Nguyen whose telephone number is (703) 605-1224, Monday-Thursday (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (703) 308-0839. The fax number for the organization where this application or proceeding assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

CQN
3/7/03

Carl D. Friedman
Supervisory Patent Examiner
Group 3600

Notice of References Cited

Application/Control No.

09/854,970

Applicant(s)/Patent Under
Reexamination
ZEIK ET AL.

Examiner

Chi Q Nguyen

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OCT 17 2003

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	MM-YYYY	Name	Classification
	A	US-6,243,993	06-2001	Swensson	52/79.5
	B	US-5,832,676	11-1998	Gillmore et al.	52/67
	C	US-			
	D	US-			
	E	US-			
	F	US-			
	G	US-			
	H	US-			
	I	US-			
	J	US-			
	K	US-			
	L	US-			
	M	US-			

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FOREIGN PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
	N					
	O					
	P					
	Q					
	R					
	S					
	T					

NON-PATENT DOCUMENTS

*		Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
	U	
	V	
	W	
	X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.05(a).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.